

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

VALERIE ROBISONBROWN, a/k/a VALERIE
ANN ROBINSON-BROWN, a/k/a VALERIE
ANN ROBINSON-BROWN,

Defendant-Appellee.

UNPUBLISHED
December 4, 2003

No. 241657
Oakland Circuit Court
LC No. 00-172150-FH

Before: Cooper, P.J., and Markey and Meter, JJ.

METER, J. (*dissenting*).

I respectfully dissent and would remand this case for resentencing.

In most instances a trial court must impose a sentence within the range produced by the sentencing guidelines. MCL 769.34(2). A trial court may depart from the produced range if it finds that a substantial and compelling reason exists to do so. See *People v Babcock*, 469 Mich 247, 272; 666 NW2d 231 (2003). To constitute a substantial and compelling reason for departing from the guidelines, the reason must be objective and verifiable and must irresistibly hold the attention of the court. *Id.* We review the trial court's determination of the existence of a substantial and compelling reason for departure for clear error, the determination that the reason is objective and verifiable de novo as a matter of law, and the determination that the reason constituted a substantial and compelling reason to depart from the guidelines for an abuse of discretion. *Id.* at 273-274.

While I find no clear error in the trial court's finding regarding defendant's clean record since being placed on probation, I conclude that the trial court erred in considering defendant's employment history, because defendant's claim of employment was not verified. Moreover, to the extent that the trial court relied on its admittedly subjective belief that defendant would refrain from further criminal activity, it also erred. Thus, the trial court's decision to depart from the mandatory minimum sentence was based in part on factors that were not verified or objective.

The trial court also failed to articulate properly its reasons for departure. Even if a court finds objective and verifiable factors favoring a departure, it is not sufficient for the court simply to identify those factors. Instead, it must explain why the factors provide a substantial and

compelling reason for departure. See *People v Daniel*, 462 Mich 1, 8-9; 609 NW2d 557 (2000), and *People v Johnson (On Remand)*, 223 Mich App 170, 173-174; 566 NW2d 28 (1997). The court must also consider the extent of the departure so as not to impose a disproportionate sentence. *Babcock, supra* at 262-264. Here, the court simply cited various factors, some of which were not verified or objective, and did not indicate why the factors were so substantial and compelling as to justify such an extensive departure from the mandatory minimum sentence.

Because (1) the trial court considered both appropriate and inappropriate factors in determining whether to depart from the mandatory minimum sentence and failed to articulate why the factors it cited considered constituted substantial and compelling reasons for departure and (2) I cannot conclusively find from the record before me that the court would have imposed the same sentence absent the use of the improper factors, I would remand for resentencing. See *id.* at 270-271.

/s/ Patrick M. Meter